

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4670

BY DELEGATES GRAVES, SUMMERS AND ESPINOSA

[Introduced February 04, 2020; Referred to the

Committee on the Judiciary.]

1 A BILL to amend and reenact §49-4-725 of the Code of West Virginia, 1931, as amended, relating
2 to the juvenile restorative justice programs; establishing that a juvenile may be diverted to
3 a restorative justice program at any time when beneficial; providing definitions; providing
4 additional elements of a juvenile restorative justice program; establishing that participation
5 in a restorative juvenile justice program is voluntary; establishing that other stakeholders
6 may participate in a restorative justice program; providing that communication between
7 the victim and juvenile, certain evidence based practices, mediation, redress, restitution
8 and sanctions may be included in a restorative justice program; and, providing that status
9 offenses may be considered in a juvenile restorative justice program as necessary or
10 appropriate.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-725. Restorative Justice Programs.

1 (a) The court or prosecuting attorney may divert a juvenile referred to the court ~~for a status~~
2 ~~offense or for a nonviolent misdemeanor offense~~ to a restorative justice program, where available
3 at any point in time where it is deemed to be of benefit, prior to adjudication.

4 (b) Definitions. — When used in this section, terms defined herein have the meanings
5 ascribed to them:

6 (1) "Divert" means referral of certain individuals to a community-based set of services
7 designed to prevent the need for court intervention;

8 (2) "Restorative justice program" is an evidence-based practice and community-based
9 program designed to understand the harm to the victim and community caused by the juvenile
10 and to organize processes in which individual crime victims, other community members, and
11 juvenile offenders are involved in finding constructive resolutions;

12 (3) "Status offense" is an offense by a juvenile who:

13 (A) Habitually and continually refuses to respond to the lawful supervision of his or her
14 parents, guardian or legal custodian such that the juvenile's behavior substantially endangers the
15 health, safety or welfare of the juvenile or any other person;

16 (B) Has left the care of his or her parents, guardian or custodian without the consent of
17 that person or without good cause; or

18 (C) Who is habitually absent from school without good cause.

19 (4) "Nonviolent misdemeanor" means a misdemeanor offense that does not include any
20 of the following:

21 (A) An act resulting in bodily injury or death;

22 (B) The use of a weapon in the commission of an offense;

23 (C) A domestic abuse offense involving a significant risk of harm to a family member or
24 household member;

25 (D) A criminal sexual conduct offense; or

26 (E) Any offense for driving under the influence of alcohol or drugs.

27 (5)(3) "Stakeholder" means a person or representative of an entity who has standing in
28 the offense for which the juvenile is charged and is before the court.

29 (6)(4) "Evidence-based practice" means policies, procedures, programs, and practices
30 demonstrated by experience and research to reliably produce reductions in the likelihood of
31 reoffending.

32 (c) A restorative justice program shall:

33 (1) Emphasize repairing the harm against the victim and the community caused by the
34 juvenile;

35 (2) Be voluntary for both the victim and the juvenile offender;

36 (3) Focus on repairing harm done through facilitated communication between victim,
37 offender, and associated third parties; which may include:

38 (A) Any evidence based practice, restorative justice programs, victim-offender mediation,
39 dialogues, or family group conferencing attended voluntarily by the victim, the juvenile offender,
40 a facilitator, a victim advocate, community members, any other stakeholder, or supporters of the
41 victim or the juvenile offender that provide an opportunity for the offender to accept responsibility
42 for the harm caused to those affected by the crime and to participate in setting consequences to
43 repair the harm; and

44 (B) Implement measures designed to provide redress to the victim and community,
45 including, but not limited to, restitution to the victim, restitution to the community, services for the
46 victim or the community, or any other reasonable sanction intended to provide restitution to the
47 victim or the community; and,

48 (4) Address status offenses as deemed necessary or appropriate.

49 (2) ~~Include victim-offender dialogues or family group conferencing attended voluntarily by~~
50 ~~the victim, the juvenile offender, a facilitator, a victim advocate, community members, or~~
51 ~~supporters of the victim or the juvenile offender that provide an opportunity for the offender to~~
52 ~~accept responsibility for the harm caused to those affected by the crime and to participate in~~
53 ~~setting consequences to repair the harm; and~~

54 (3) ~~Implement sanctions for the juvenile, including, but not limited to, restitution to the~~
55 ~~victim, restitution to the community, services for the victim or the community, or any other sanction~~
56 ~~intended to provide restitution to the victim or the community.~~

57 (d) If a juvenile is referred to and successfully completes a restorative justice program, the
58 petition against the juvenile shall be dismissed.

59 (e) No information obtained as the result of a restorative justice program is admissible in
60 a subsequent proceeding under this article.